

Contractors who physically incorporate tangible personal property into real estate owned by holders of E-numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the E-number of the group into whose real estate that property will be incorporated. See 86 Ill. Adm. Code 130.2075. (This is a GIL.)

November 3, 2004

Dear Xxxxx:

This letter is in response to your letter dated April 2, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This is in reference to Illinois Sales and Use Tax in which we would like to verify/clarify the following:

We, as a Seller is from the STATE and registered in State of Illinois. Our customer ABC bought a carpet from us they are claiming the end user is ORGANIZATION.

ABC claim tax exempt by providing us with ORGANIZATION Exemption Letter. My question is. Can ABC use ORGANIZATION Exemption Letter to be exempt from Illinois sales tax? Attached is a copy of invoice and ORGANIZATION Exemption Letter.

We would like to request a written decision if the above transaction is tax exempt in order for us to issue credit for Illinois Sales Tax to ABC.

Thank you for immediate attention on this matter.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of

tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as “sales” tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers’ Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

Please be advised that a construction contractor incurs Retailers’ Occupation Tax liability when he sells furniture and furnishings, curtains, drapes, floor covering (except when he cements or otherwise permanently affixes the floor covering to a portion of the building), trade fixtures and machinery (unless in the case of machinery Section 130.2115(b) applies) to purchasers for use or consumption, with or without installation by the seller, whether or not the seller furnishes and installs such items as a part of a construction contract. See 86 Ill. Adm. Code 130.1940(b)(2). If the seller does this, then the seller should provide you with a Certificate of Resale to document the resale exemption.

Persons who are engaged in the occupation of entering into and performing construction contracts for customers are acting as construction contractors. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Persons from other states who act as construction contractors in Illinois by permanently affixing tangible personal property to real estate owe Illinois Use Tax on the cost price of the tangible personal property affixed to that real estate.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to “reimburse” the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to customer as “sales tax,” but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor’s part.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational or charitable organizations receive an exemption identification number (an “E-number”) from the Department. See 86 Ill. Adm. Code 130.2005 and 130.2007. As previously stated above, contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate and owe Use Tax upon their purchases.

The documentation you need to record a tax-exempt sale depends on what your customer does with the floor covering. Suppliers making sales to retailers who will resell the tangible personal property should obtain Certificates of Resale to document the resale exemption. See 86 Ill. Adm. Code 130.2101(a).

Suppliers who make sales of floor coverings to construction contractors for use in performing construction contracts must collect Use Tax from their contractors. Certificates of Resale are not applicable to these transactions. See, 86 Ill. Adm. Code 130.2101(b). However, contractors who physically incorporate tangible personal property into real estate owned by holders of E-numbers can purchase such property tax-free by providing their suppliers with the certification described in Section

130.2075(d), as well as the E-number of the group into whose real estate that property will be incorporated. See 86 Ill. Adm. Code 130.2075. The suppliers must retain this information in order to document the tax-exempt sale.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

EEB:msk